HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 18581 of 2007

Between:

M. Appa Rao

… Petitioner

And

The District Collector, Visakhapatnam & others

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri Addepally Suryanarayana

Counsel for respondent Nos. 1 to 3 : Assistant Government Pleader for Revenue

August 31, 2007

Per G.S. SINGHVI, CJ

This is a petition for quashing notice-cum-order dated 25.08.2007 issued by Tahasildar, Visakhapatnam (Urban) Mandal, Visakhapatnam (respondent No.3) for demolition of the structure erected by the petitioner for running ice cream parlour on Ramakrishna Beach, Visakhapatnam.

Notice to respondent Nos. 1 to 3.

Learned Assistant Government Pleader for Revenue accepts notice.

With the consent of the learned counsel for the parties, we have heard the arguments on the merits of the case.

A perusal of the impugned notice-cum-orders shows that the same is purported to have been issued in compliance of the direction given by this Court in Writ Petition No. 8177 of 2007, but having perused the record of the case, we do not have the slightest hesitation to observe that respondent No.3 has completely misunderstood the purport of the direction given by the Court to take action in the matter of violation of C.R.Z. notification. What the Court had intended was that the concerned officers should survey the entire area, identify the constructions and structures erected in violation of the C.R.Z. notification, give notice and opportunity of hearing to the concerned person and then pass appropriate order. However, without issuing notice to the petitioner and giving him an opportunity to represent his cause, respondent No.3 issued the impugned notice-cum-order for demolition of the structure, which, in our opinion, is liable to be nullified on the ground of violation of the rules of natural justice.

In view of the above conclusion, we may have quashed the impugned notice-cum-order with liberty to respondent No.3 to issue show cause notice to the petitioner, but with a view to obviate unnecessary delay in the matter, we deem it proper to direct that the notice under challenge be treated as a preliminary notice and the petitioner may file reply to the same and thereafter, respondent No.3 may pass appropriate order.

Hence, the writ petition is disposed of in the following terms:

1) The notice impugned in the writ petition shall be treated as preliminary notice to the writ petitioner to show cause against the proposed removal of the structure erected by him on the ground of violation of the C.R.Z. notification.

2) The petitioner may, if so advised, file reply within a period of two weeks from today and raise all legally permissible

objections against the action proposed to be taken.

3) Respondent No.3 shall hear the petitioner or his representative, consider the reply already filed by him in the form of representation together with the supplementary reply, if any filed in terms of para 2 above, and then pass a reasoned order. This exercise shall be completed within two weeks counted from the expiry of the period specified in para 2 above. The order passed by respondent No.3 hall be communicated to the petitioner.

4) If the authority concerned decides to demolish the structure raised by the petitioner, then the order of demolition shall not be given effect to for next seven days.

As a sequel to disposal of the writ petition, W.P.M.P. No. 23855 of 2007 filed by the petitioner for interim relief is dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 31, 2007

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